UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

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| M. GARCIA,<br>Plaintiff<br><br>V.<br><br>DONALD TRUMP, as President of the United States, JEH CHARLES JOHNSON, as Secretary of the Department of Homeland Security; LEÓN RODRÍGUEZ, Director of the U.S. Citizenship & Immigration, ROBERT COWAN, as Director of the US Citizenship & Immigration Services for the National Benefits Center,<br>Defendants | CIVIL ACTION FILE NO.<br>1:17 CV 00022-JD |

COMPLAINT FOR WRIT IN THE NATURE OF
MANDAMUS & DECLARATORY JUDGEMENT

NOW comes M. Garcia, Plaintiff in the above-captioned matter, and hereby states as follows:

1. This action is brought against the Defendants to compel action as a result of their failure to properly and timely adjudicate an application for an immigrant benefit properly filed by the Plaintiff, M. Garcia

PARTIES

2. Plaintiff, M. Garcia, is an individual who resides in New Hampshire, who filed an I-765, an application for the renewal of his Employment Authorization Document.

3. Defendant, Donald Trump, is the President of the United States, and this action is brought against him in his official capacity. He is generally charged with enforcement of the

Immigration and Nationality Act, and is further authorized to delegate such powers and authority to the Secretary of Homeland Security as well as subordinate employees of the Department of Homeland Security. 8 USC §1103(a).

4. Defendant, Jeh Charles Johnson, is the Secretary of the Department of Homeland Security, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Homeland Security. 8 USC §1103(a). More specifically, the Secretary of the Department of Homeland Security is responsible for the adjudication of applications for immigrant visas filed pursuant to the Immigration and Nationality Act (INA). The U.S. Citizenship & Immigration Services is an agency within the Department of Homeland Security to whom the Secretary of the Department of Homeland Security's authority has in part been delegated, and is subject to the Secretary of the Department of Homeland Security's supervision.

5. Defendant, León Rodríguez, is the Director of the U.S. Citizenship & Immigration Services (USCIS) and an official generally charged with supervisory authority over all operations of the USCIS with certain specific exceptions not relevant here. 8 CFR §1103.1(g)(2)(ii)(B).

5. Defendant, Robert Cowan, Center Director, is an official of the U.S. Citizenship & Immigration Services (USCIS) generally charged with authority over operations of the USCIS within his Center, with certain specific exceptions not relevant here. 8 CFR §1103.1(g)(2)(ii)(B). As will be shown, Defendant Center Director is the official with

whom Plaintiffs' application for an immigrant benefit was properly filed.

JURISDICTION

6. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*, and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

VENUE

7. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant is located and performs his official duties.

EXHAUSTION OF REMEDIES

8. The Plaintiff has exhausted his administrative remedies. The Plaintiff supplied the defendants with documents that clearly establish his eligibility for the renewal of his Employment Authorization Document which was improperly adjudicated by the defendants and there is no further reasonable administrative remedy available.

CAUSE OF ACTION

9. The Plaintiff properly filed an application for renewal of his Employment Authorization Document, Form I-765, pursuant to 8 CFR § 274a.12(c)(9).

10. This petition, Receipt No. MSC 16-913-51564, was not properly adjudicated and has left the plaintiff without documentation of his eligibility to be employed in the United States in violation of the Immigration & Nationality Act.

11. The defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements and to issue an Approval Notice.

12. The defendants failure to make a determination in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have inappropriately adjudicated the petition, thereby depriving him of the rights to which the Plaintiff is entitled.

15. The Plaintiff has been greatly damaged by the failure of Defendants to act in accord with their duties under the law.

16. The Defendants, in violation of the Administrative Procedures Act, 5 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on the Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to the Plaintiff's case.

17. The Plaintiff has provided sufficient evidence in an attempt to secure adjudication of these applications at issue, all to no avail. Accordingly, the Plaintiff has been forced to retain the services of his attorney to pursue the instant action.

PRAYER

18. WHEREFORE, in view of the arguments and authority noted herein, the Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

(a) requiring Defendants to properly adjudicate Plaintiffs application;

(b) requiring Defendants to provide the Plaintiffs with a Notice of Approval;

(c) awarding Plaintiffs reasonable attorney's fees; and

(d) granting such other relief at law and in equity as justice may require.

Respectfully submitted,

/s/ Desmond P. FitzGerald
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